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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BARRY'S AUTO BODY OF NY LLC,	: <u>Civil Action No.</u>
	:
Plaintiff	:
	:
- against -	: COMPLAINT
	:
ALLSTATE FIRE & CASUALTY INSURANCE COMPANY. INC., ALLSTATE INSURANCE COMPANY,	PLAINTIFF DEMANDS A TRIAL BY JURY
Defendants.	
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Plaintiff, BARRY'S AUTO BODY OF NY LLC ("Plaintiff"), by and through its attorneys, WARD & RAFTER LLP as and for its Complaint against ALLSTATE FIRE & CASUALTY INSURANCE COMPANY, and ALLSTATE INSURANCE COMPANY ("Defendants"), hereby states and alleges as follows:

NATURE OF THE ACTION

1. This is an action brought pursuant to New York State Common Law and General Business Law 349 based allegations of breach of contract and deceptive business practices arising under standard form automobile insurance contracts issued by Defendants in the State of New York. Plaintiff brings this action both in its individual capacity and as an Assignee pursuant to assignments obtained from individual customers.

PARTIES

2. Plaintiff is a Domestic Limited Liability Company duly formed and authorized to transact

business under the laws of the State of New York with its principal place of business located at 4301 Amboy Road, Staten Island, New York, 10304.

3. Upon Information and belief, defendant Allstate Fire & Casualty Insurance Company (“Allstate”) is a foreign insurance company authorized to sell insurance within the state of New York and with a principal place of business located at 1125 RXR Plaza Uniondale, New York 11553.

4. Upon information and belief, defendant Allstate Insurance Company (“Allstate Insurance”) is a foreign insurance company authorized to sell insurance within the State of New York and with a principal place of business located at 1125 RXR Plaza Uniondale, New York, 11553.

JURISDICTION AND VENUE

5. This action is between citizens of different states. The amount in controversy exclusive of interest and costs, exceeds \$75,000.00. Therefore, jurisdiction is based on diversity of citizenship pursuant to 28 U.S.C. §1332.

6. Venue is deemed proper in this District pursuant to 28 U.S.C. §1391. A substantial part of the actions, events, and omissions giving rise to this action took place within the jurisdiction of this Court.

DEMAND FOR TRIAL BY JURY

7. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury.

FACTS COMMON TO ALL CAUSES OF ACTION

8. Plaintiff is the Assignee of personal property damage claims as well as all other claims arising out of the repair of their vehicles (including GBL 349 claims) by the following persons (“First Party Assignors”), each of whom brought their vehicles to Plaintiff for repairs. As

indicated below, each of the following Assignors was an insured of Allstate Fire and Casualty or Allstate Insurance (collectively the “Allstate Defendants”):

	Assignor	Policy No.	Claim No.
1	Assenato, Peter	978360618	0737104174
2	Balistierte, Samantha	943586625	0745726844
3	Blum, Jaci	933744073	0745030106
4	Bosek, Rosemarie	043086328	0743781262
5	Camacho, Theresa	903811868	0737652016
6	Cavaliere, Diane	03632994	0729495738
7	Ciavola, Rosemarie	943439106	0730506086
8	Coffey, Matthew	978911460	0744380668
9	Cohen, Bernard	978108403	0734941347
10	Costabile, Gerald	978810995	0736391913
11	Crocchio, Marie	978485879	0746931492
12	Cummings, Debra	933418906	0737425140
13	Curci, Theresa	978961502	0743812638
14	Demola, Joanne	978568574	0733769749
15	Dewling, Michelle	983037415	0738523315
16	DiNatale, Angela	943707667	0735695800
17	Dugan, Krista	978487432	0732753769
18	Fauci, Anthony	903624825	0747237139
19	Festa, Ronald	983120243	0745612002
20	Galbo, Frank	9337566312	0740823141
21	Galbo, Susan	9337566312	0743150385

22	Guddemi, Paola	913956192	0743305518
23	Guttilla, Lillian	978195264	0733891584
24	Induddi, Scott	978207884	073985341
25	Kotsonis, Allison	978547344	0732561949
26	Maroney, Louise	043588972	0732718408
27	Marotta, Carol	943174840	0745929307
28	Maxwell, Barbara	43584681	0730336799
29	McHenry, Lisa	903295911	0737665380
30	Meyers, Martha	943681252	0742722985
31	Monier, Philip	Unknown	0727698697
32	Murphy, Michael	978332248	0728548199
33	Nyhus, Catherina	903121977	0729733401
34	Piazza, Elizabeth	978547344	0692059728
35	Pipitone, Rosi	078827755	0743131559
36	Porcelli, Nat	943502136	0741243513
37	Racanelli, Vincent	913248530	0731762381
38	Raiola, Joseph	978431698	0746222132
39	Reynolds, Scott	943158227	0721950194
40	Roma, Thomas	933898241	0734770761
41	Ryan, Kerri Ann	978405447	0739483030
42	Schuler, Dennis	943337856	0739901527
43	Soliman, Safwat	983126100	0745096890
44	Speciale, Dean	978342950	0727791139
45	Thaten, Pauline	978638506	0730342482

46	Venditti, Anthony	983086134	0743652711
47	Vento, Anthony	933768243	729475368
48	Vitiello, John		74117471
49	Vourlos, Kathleen	909974473	0735727190

9. At all times relevant to this Complaint, the policies for each of Allstate Defendants' insureds listed above (collectively the "Policies") were in effect.

10. The Policies at issue were standard form automobile insurance policies, which contain essentially the same terms of all insureds within the State of New York.

11. Plaintiff is also the Assignee of GBL 349 Claims (as well as all other claims) by the following persons ("Third Party Assignors"), each of whose vehicles were damaged by vehicles insured by the Allstate Defendants, and for whom the Allstate Defendants accepted liability and agreed to pay for motor vehicle repairs pursuant to their policies of automobile insurance.

	Assignor	Claim No.	VIN No.
1	Castellano, Jos.	0740092655	1C6RRFFGXKN874406
2	Comiskey, Evel.	0744061797	JN8AT2MV2KW386793
3	Cusano, Judith	0737852764	3MVDMBBM4RM600434
4	Franzese, Gerri	0738506385	KL7CJKSB6GB758057
5	Haran, Stephen	0728506972	4JGDA5HB1JB159595
6	Kepley, Steven	0732297162	1GYKNCRS1KZ163913
7	Leo, John	072174562	JTJHZKFA9N2037755
8	McKernan, Wil.	0728548199	KL7CJNSB2LB087170
9	Mercado, L	0739385201	1HGCR2F36DA035997
10	Parente, Danielle	747007986	KM8K3CAB9NU898790

11	Sannicandro, L.	0727891558	5N1ATBBXMC734043
12	Segreto, Lisa	0741928857	3CZRU6H72GM730316

12. That for each of the above claims, these Policies provided insurance coverage for property damage to the automobiles listed above.

13. For each of the Assignors, the Allstate Defendants provided only partial payment for the property damage claims specified above.

14. That in each claim set forth above, the Allstate Defendants were obligated to provide sufficient coverage to restore the Assignors' Vehicles to the same condition they were in immediately prior to the Accidents.

15. That each of the Assignors made the Plaintiff his/her designated representative as provided for by Regulation.

16. That with respect to each of the Vehicles, Plaintiff provided the Allstate Defendants with Estimates that reflected the amount necessary for proper repair of the Vehicle and/or to return the Vehicle to its pre-accident condition.

17. That with respect to each of the Vehicles set forth above, the Allstate Defendants provided Plaintiff with copies of its Estimate for Repairs (the "Insurer's Estimates").

18. That Plaintiff sent final bills to the Allstate Defendants with demand for payment in full.

19. The Insurer's Estimates were insufficient to repair the Vehicles to their pre-accident condition as required by New York State Insurance Laws and Regulations.

20. That each of the Assignors assigned to Plaintiff all claims against the Allstate Defendants arising out of the repair of their vehicles including, but not limited to, their respective property damage claims against Allstate and any claims pursuant to GBL 349.

Allstate Defendants' Claims Practices

21. That at all times mentioned herein, Allstate Defendants used improper methods for calculating the number of hours of labor required to repair the Vehicles, including without limitation, refusing to pay for certain necessary repairs, refusing to allow hours for items which were recommended by the manufacturer guidelines and/or best practices, and refusing to account for the published guidelines that are generally accepted within the automotive insurance repair industry.

22. That in preparing the Insurer's respective Estimates to repair the Vehicles, Allstate Defendants set arbitrary price caps on the amount it would pay per unit for: labor costs to repair the Vehicles, paint materials such as primers and fillers, and body shop materials.

23. The capped labor rates set by Allstate Defendants were far below market rate.

24. As a result of the above-described improper policies, practices and procedures, the Insurer's Estimates did not provide sufficient coverage to repair the Vehicles to their pre-accident condition as Allstate was obligated to do under both the applicable insurance policy and New York State law.

25. Upon information and belief, in each of the claims, specified above, Allstate Defendants misrepresented to the Assignors that another repair shop would repair the Vehicles to their pre-accident condition for the amount in Allstate Defendants' Estimates, but that these statements were materially false insofar as no other shop had previously inspected the Vehicles and/or agreed to accept Allstate Defendants' estimates. Such statements were also materially false insofar as Allstate Defendants failed to disclose that such other shops reserved the right to exceed Allstate Defendants' estimates.

26. That Plaintiff served Allstate Defendants with notice of the deficiency amounts due and

owing on each of the aforementioned vehicles and demanded payment of the amounts due.

27. That Defendants jointly and severally impeded and delayed fair settlement of the Assignor's claims by using improper costs schedules, setting arbitrary price caps, refusing to negotiate in good faith on labor rates, refusing to pay appropriate amounts for paint materials and parts, and by otherwise failing to inspect or re-inspect the Vehicles within the time frames specified by regulation.

28. That Plaintiff completed the repairs to the Vehicles that were necessary to constitute a proper repair and/or restore them to their pre-accident condition.

29. That in each of the above referenced Claims, Allstate Defendants made only a partial payment and failed to pay Plaintiff for the full amount actually required to for a proper repair and/or to restore the Vehicles to their pre-accident condition.

30. That the deficiencies currently due and owing to Plaintiff as a result of its repair of the First Party Assignors' vehicles are as follows:

	Assignor	Claim No.	Deficiency
1	Assenato, Peter	0737104174	\$8,359.26
2	Balistierte, Samantha	0745726844	\$16,458.60
3	Blum, Jaci	0745030106	\$9,478.46
4	Bosek, Rosemarie	0743781262	\$12,958.17
5	Camacho, Theresa	0737652016	\$11,109.44
6	Cavaliere, Diane	0729495738	\$9,413.20
7	Ciavola, Rosemarie	0730506086	\$9,706.42
8	Coffey, Matthew	0744380668	\$13,375.50
9	Cohen, Bernard	0734941347	\$8,592.67

10	Costabile, Gerald	0736391913	\$10,017.75
11	Crocco, Marie	0746931492	\$10,573.94
12	Cummings, Debra	0737425140	\$7,695.93
13	Curci, Theresa	0743812638	\$13,264.31
14	Demola, Joanne	0733769749	\$10,191.28
15	Dewling, Michelle	0738523315	\$15,857.03
16	DiNatale, Angela	0735695800	\$14,498.28
17	Dugan, Krista	0732753769	\$13,236.54
18	Fauci, Anthony	0747237139	\$10,280.13
19	Festa, Ronald	0745612002	\$13,876.05
20	Galbo, Frank	0740823141	\$11,600.77
21	Galbo, Susan	0743150385	\$12,804.00
22	Guddemi, Paola	0743305518	\$10,284.15
23	Guttilla, Lillian	0733891584	\$10,166.72
24	Induddi, Scott	073985341	\$10,237.34
25	Kotsonis, Allison	0732561949	\$18,661.99
26	Maroney, Louise	0732718408	\$14,015.76
27	Marotta, Carol	0745929307	\$20,780.06
28	Maxwell, Barbara	0730336799	\$17,361.35
29	McHenry, Lisa	0737665380	\$14,997.46
30	Meyers, Martha	0742722985	\$10,584.73
31	Monier, Philip	0727698697	\$9,638.17
32	Murphy, Michael	0728548199	\$9,515.50
33	Nyhus, Catherina	0729733401	\$6,405.28

34	Piazza, Elizabeth	0692059728	\$8,299.03
35	Pipitone, Rosi	0743131559	\$10,900.81
36	Porcelli, Nat	0741243513	\$12,023.13
37	Racanelli, Vincent	0731762381	\$16,293.40
38	Raiola, Joseph	0746222132	\$12,840.37
39	Reynolds, Scott	0721950194	\$12,291.75
40	Roma, Thomas	0734770761	\$18,512.39
41	Ryan, Kerri Ann	0739483030	\$9,917.38
42	Schuler, Dennis	0739901527	\$14,037.51
43	Soliman, Safwat	0745096890	\$18,051.88
44	Speciale, Dean	0727791139	\$11,958.79
45	Thaten, Pauline	0730342482	\$8,953.83
46	Venditti, Anthony	0743652711	\$14,025.07
47	Vento, Anthony	729475368	\$12,028.65
48	Vitiello, John	74117471	\$23,041.22
49	Vourlos, Kathleen	0735727190	\$15,287.48
	TOTAL 1st Party Deficiencies		\$614,459.33

31. That the deficiencies currently due and owing to Plaintiff as a result of its repair of the Third Party Assignors' vehicles are as follows:

	Assignor	Claim No.	Deficiency
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1	Castellano, Jos.	0740092655	\$19,813.83
2	Comiskey, Evel.	0744061797	\$7,050.25
3	Cusano, Judith	0737852764	\$8,135.39
4	Franzese, Gerri	0738506385	\$18,413.55
5	Haran, Stephen	0728506972	\$6,544.52
6	Kepley, Steven	0732297162	\$11,914.34
7	Leo, John	072174562	\$7,010.16
8	McKernan, Wil.	0728548199	\$7,614.68
9	Mercado, L	0739385201	\$15,454.91
10	Parente, Danielle	747007986	\$7,925.50
11	Sannicandro, L.	0727891558	\$5,800.52
12	Segreto, Lisa	0741928857	\$14,618.65
	Total 3rd Party Deficiencies		\$122,160.91

FIRST CLAIM FOR RELIEF

(Breach of Contract against Defendant Allstate Fire and Casualty Insurance Company)

32. Plaintiff repeats and reiterates paragraphs 1 through 27 of the Complaint as if fully set forth herein at length.

33. That Assignors were each in privity of contract with Allstate as a result of the insurance policies issued by Allstate that were in effect on of the loss.

34. That Pursuant to its insurance Policies, Allstate was obligated to provide sufficient coverage to pay for a proper repair and/or to restore the Assignors' Vehicles to their pre-accident condition.

35. That Allstate has failed and refused to pay the deficiencies for repairs on these Assignors' Vehicles in the total sum of \$614,459.33 in violation of its contractual obligation under the Policies.

36. That Allstate's refusal to pay the full cost to repair, damaged the Assignors, who were billed for the full amount necessary to repair their respective Vehicles to their pre-accident condition, was a breach of its contract to insure its policy holders for such claims.

37. As set forth above, Plaintiff is the Assignee of each of the Assignors' claims against Allstate.

38. As a result of the foregoing, Plaintiff is entitled to damages from Allstate in the amount of \$614,459.33, plus interest.

SECOND CLAIM FOR RELIEF

(Breach of Contract against Defendant Allstate Insurance Company)

39. Plaintiff repeats and reiterates paragraphs 1 through 34 of the Complaint as if fully set forth herein at length.

40. That Assignors were each in privity of contract with Allstate Insurance Company as a result of the insurance policies (the "policies") issued by Allstate Insurance Company that were in effect on of the loss.

41. That Pursuant to these Policies, Allstate Insurance was obligated to provide sufficient coverage to pay for a proper repair and/or to restore the Assignors' Vehicles to their pre-accident condition.

42. That Allstate Insurance has, despite demand by plaintiff, failed and refused to pay the deficiencies for repairs on these Assignors' Vehicles in the total sum of \$614,459.33 in violation of its contractual obligation under the Policies.

43. That Allstate Insurance's refusal to pay the reasonable cost to repair, damaged the Assignors, who were billed for the full amount necessary to repair their respective Vehicles to their pre-accident condition, was a breach of its contract to insure its policy holders for such claims.

44. As set forth above, Plaintiff is the Assignee of each of the Assignors' claims against Allstate Insurance.

45. As a result of the foregoing, Plaintiff is entitled to damages from Allstate in the amount of \$614,459.33, plus interest.

THIRD CLAIM FOR RELIEF
(VIOLATION OF GENERAL BUSINESS LAW§349 AGAINST ALLSTATE FIRE
AND CASUALTY INSURANCE COMPANY)

46. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 41 as if fully set forth herein at length.

47. That during the relevant time period when the claims herein arose, Plaintiff has had numerous dealings with Defendant Allstate for insurance claims for repairs to its Insureds' vehicles, as well as claims by Third Parties whose vehicles were damaged by Allstate's Insureds, pursuant to insurance policies issued by Allstate.

48. That Allstate has over this period of time consistently and systematically provided lower estimates of the cost of repairs than what is actually the reasonable cost of repairing a given vehicle to its pre-loss condition.

49. That Allstate has continually deceived its insureds and third parties whose vehicles were damaged by Allstate's insureds, by purporting to honor its contractual obligation to pay the reasonable cost to repair the vehicles while simultaneously employing covert, deceptive and subversive tactics that are intended to avoid its contractual obligations.

50. These tactics include but are not limited to, using inappropriate methods of determining the number of hours of labor, the arbitrary capping of labor rates, arbitrary capping of paint and materials, refusing to pay for body shop materials, all items required by trade manuals that are generally accepted in the field of auto body repair.

51. Allstate has also repeatedly and continuously deceived its consumers and third parties regarding the availability of other repair shops that would put the vehicle to its pre-loss condition for the amount of Allstate's estimate.

52. Allstate has also continuously used misrepresentations about Plaintiff, the quality of its workmanship, and its staff as in order to undermine and damage Plaintiff's credibility with its customers.

53. Allstate has continuously engaged in "steering" where it pressures its insureds and third parties whose vehicles were damaged by its insureds, not to use Plaintiff's shop and instead pressures them to use repair shop(s) recommended by Allstate, resulting in additional damages in the form of lost business

54. That as a result of the foregoing policies of Allstate, which affected all general consumers and customers of Allstate, Allstate has violated General Business Law § 349 by misrepresenting its coverage to its insureds while engaging in the unfair claims practices as described above and by arbitrarily and improperly refusing to pay the actual amounts reasonably necessary to restore each Vehicle to its pre-loss condition on both the First Party and Third Party assignors' claims.

55. That Allstate's ongoing deceptive business practices are in violation of GBL § 349.

56. That Allstate's misrepresentations to its insureds, to third parties whose vehicles were damaged by Allstate's insureds, and its failure to provide the benefits contracted for in its insurance policies constitute a deceptive business practice within the meaning of GBL § 349.

57. That Plaintiff's Assignors are Allstate insureds or third parties, who are consumers who have been targeted and injured by the deceptive actions of Allstate.

58. That Plaintiff has been directly injured because it has not been paid the actual cost of repairs that were completed on the Vehicles and which were reasonably necessary to restore the Vehicles to their pre-loss condition.

59. As a result of the foregoing, Allstate has violated GBL 349 and Plaintiff is entitled to damages on its direct claims for each violation provided herein (or in the alternative as Assignee of the claims of its Assignors), totaling at least \$736,620.24, with the actual amount to be determined at trial, as well as reasonable attorneys' fees as provided for by the statute and interest.

FOURTH CLAIM FOR RELIEF

(VIOLATION OF GENERAL BUSINESS LAW§349

AGAINST ALLSTATE INSURANCE COMPANY)

60. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 55 as if fully set forth herein at length.

61. That during the relevant time period set forth herein, Plaintiff has had numerous dealings with Defendant Allstate Insurance for insurance claims for repairs to its insureds' vehicles, as well as vehicles owned by third parties that were damaged by Allstate Insurance's insureds, pursuant to insurance policies issued by Allstate Insurance.

62. That Allstate Insurance has over this period of time consistently and systematically provided lower estimates of the cost of repairs than what is actually the reasonable cost of repairing a given vehicle to its pre-loss condition.

63. That Allstate Insurance has continually engaged in unfair claims practices as described above, including using inappropriate methods of determining the number of hours of labor, the

arbitrary capping of labor rates, arbitrary capping of paint and materials, refusing to pay for body shop materials, and misleading consumers regarding the availability of other repair shops that would put the vehicle to its pre-loss condition for the amount of Allstate Insurance's estimate.

64. That Allstate Insurance has continuously engaged in "steering" where it pressures its insureds and third parties whose vehicles were damaged by its insureds, not to use Plaintiff's shop and instead pressures them to use repair shop(s) recommended by Allstate Insurance, resulting in additional damages in the form of lost business.

65. That as a result of the foregoing policies of Allstate Insurance, which affected all general consumers and customers of Allstate Insurance as well as Third Parties whose vehicles were damaged by Allstate insureds, Allstate Insurance has violated General Business Law § 349 by misrepresenting its coverage to its insureds and third parties while engaging in the unfair claims practices as described above and by arbitrarily and improperly refusing to pay the actual amounts reasonably necessary to restore each Vehicle to its pre-loss condition.

66. That Allstate Insurance's ongoing deceptive business practices are in violation of GBL § 349.

67. That Allstate Insurance's failure to negotiate in good faith repair claims by its Insureds and third parties constitute a deceptive business practice within the meaning of GBL § 349.

68. That all of Plaintiff's Assignors referenced herein are consumers who have been targeted by the deceptive actions of Allstate Insurance.

69. Plaintiff has been injured because it has not been paid the actual cost of repairs that were completed on the Vehicles and which were reasonably necessary to restore the Vehicles to their pre-loss condition.

70. As a result of the foregoing, Allstate Insurance has violated GBL 349 and Plaintiff is entitled

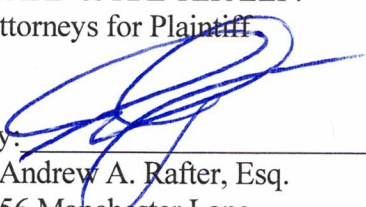
to actual damages on its direct claims for each violation provided herein (or in the alternative as Assignee of the claims of its Assignors), totaling at least \$736,620.24 with the total amount to be determined at trial, as well as reasonable attorneys' fees as provided for by the statute.

WHEREFORE, Plaintiff demands judgment against Defendant Allstate Fire and Casualty Insurance Company for the sum of \$614,459.33 on its First Claim for Relief; judgment against Defendant Allstate Insurance Company for the sum of \$614,459.33 on its Second Claim for Relief; judgment against Allstate Fire and Casualty Insurance Company in the sum of at least \$736,620.24 and reasonable attorneys' fees on its Third Claim for Relief; judgment against Allstate Insurance Company in the sum of at least \$736,620.24 plus reasonable attorneys' fees on its Fourth Claim for Relief, plus, the costs and disbursements of this action, and for such other and further relief as to the Court may deem just and proper.

Dated: Cranford, New Jersey
December 9, 2024

Yours, etc.

WARD & RAFTER LLP.
Attorneys for Plaintiff

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